

**Management-Labor
Advisory Committee
Recent Noteworthy Cases
June, 2018**

**Written materials prepared by
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Chu v. SAIF and DCBS, 290 Or App 479 (2018)

- **Worked 1 day/week with EAI, plus two other jobs. AWW at EAI was \$100/week.**
- **Not released to job at injury.**
- **Not voc eligible – could earn \$80/week.**
- **“The employment held at time of injury.”**
- **Director’s rule inconsistent with ORS 656.340(5).**
- **2001 Legislative history for supplemental TTD – not to affect other benefits.**
- **No indication legislature understood eligibility depended only on EAI wages.**

Mekayla Dancingbear, 70 Van Natta 550 (2018)

- **Order on Reconsideration awarded additional TTD.**
- **Claimant requested hearing seeking an assessed fee under ORS 656.383(1)**
- **Board concluded 656.383(1) does not apply to Reconsideration process**
- **ORS 656.268(6) provides for 10 percent out-of-compensation attorney fee.**
- **Legislative history considered.**
- **Dissent notes that 656.383(1) references ORS 656.268**

***Gadalean v. SAIF*, 286 Or App 227 (2017)**

- **Job applicant put to a pre-employment driving test.**
- **Participated in an actual delivery.
Injured disconnecting a hose.**
- **Although no remuneration, claimant was in fact put to work.**
- **Delivery was the employer's business.**
- **Review pending at Supreme Court.**

Garcia-Solis v. Farmers, 288 Or App 1 (2017)

- **Compensability of diagnostic services.**
- **Accepted concussion and head injury**
- **Referred to psychologist for PTSD-like symptoms**
- ***Brown* decision applied: Diagnostic services are compensable only if necessary to determine the cause or extent of an accepted compensable injury ... but not for the purpose of establishing the compensability of a new or consequential condition.**

Bundy v. Nustar GP, LLC, 362 Or 282 (2017)

- **Exclusive remedy issue.**
- **Civil negligence claims for harm of “new/omitted” mental condition - filed after final order finding them not compensable.**
- **“Claim” under ORS 656.019 (procedural exception to exclusive remedy) includes not only initial, but also subsequent claims.**
- **Court only decided the procedural issue (motion to amend complaint), not whether 656.019 functions as a substantive exception to exclusive remedy.**